



1994

Architects — Blueprints and Models

Facts 1:

Medical Corporation (hereinafter "Medical") is a nonprofit organization, qualified under § 501(c) of the Internal Revenue Code, providing a full range of inpatient medical services to the general public. Medical holds a Certificate of Exemption from sales tax (DOR Form ST-2) issued by the Commissioner of Revenue. Medical entered into a "cost plus" contract for architectural services with Architect Associates (hereinafter "Architect"), a registered architect engaged in the practice of architecture, as defined in G.L. c. 112, § 60A, in connection with the design of a new Boston area hospital. Medical has also entered into a contract with Construct-O Building Co. (hereinafter "Construct-O"), a general contractor, to act as its agent with respect to the construction of the hospital.

Under Architect's contract with Medical, Architect must provide Medical's agent, Construct-O, with up to 100 copies of the design and specification blueprints for the construction of the hospital. Construct-O will keep some of the blueprints for its own use, and will send others to different public officials in order to secure the various construction permits necessary for the project. Finally, Construct-O sends the remaining blueprint copies to an assortment of subcontractors who will be submitting bids to Construct-O on the different building components of the project.

Architect orders 100 copies of its design and specification blueprints from Printz Printing Co. (hereinafter "Printz"), a retail printing and reproduction company. In its invoice to Medical, Architect separately states the charges from Printz for the 100 blueprint copies, and is reimbursed by Medical for the full cost of procuring the copies.

Issue 1-1:

Is the sale of the design and specification blueprints by Printz to Architect subject to Massachusetts sales tax?

Directive 1-1:

Yes. The sale of the design and specification blueprints by Printz to Architect is subject to Massachusetts sales tax.

Issue 1-2:

Is the transfer of the design and specification blueprints from Architect to Construct-O subject to Massachusetts sales tax?

Directive 1-2:

No. The subsequent transfer of the design and specification blueprints by Architect to Construct-O is *not a sale of tangible personal property* by Architect, and, for that reason, is not subject to Massachusetts sales tax.

Discussion of Law: Depository Copy

In Massachusetts, an excise is imposed upon the retail sale of tangible personal property in the Commonwealth. See G.L. c. 64H, § 2. A "retail sale" is defined as "a sale of ... tangible personal property ... for any purpose other than resale in the regular course of business. ... The term ... 'retail sale' shall not include ... (c) professional, insurance, or personal service transactions which involve no sale or which involve sales as consequential elements for which no separate charges are made. ..." G.L. c. 64H, § 1. A "sale" is defined, in part, as "any transfer of title or possession, or both ... of tangible personal property ... for a consideration. ..." G.L. c. 64H, § 1.

Printz is in the business of selling tangible personal property. Thus, its transfer of the blueprints to Architect for a consideration is a "sale" of tangible personal property subject to Massachusetts sales tax. See G.L. c. 64H, § 2. Printz is required to collect sales tax from Architect on such a transfer. See G.L. c. 64H, § 3.

Architect's subsequent transfer of blueprints to Medical's agent, Construct-O, is not subject to Massachusetts sales tax. Architect provides a professional service. It has contracted with Medical to serve as the architect in charge of the design of the hospital to be built by Construct-O. As part of its contract with Medical, Architect is to provide Construct-O with the blueprints for the construction of the hospital. The transfer of design and specification blueprints involves the transfer of architectural services embodied in tangible personal property. Where services are embodied in the tangible personal property transferred to a buyer, the Massachusetts courts have applied an "object of the transaction" test to determine whether the transaction involves the sale of tangible personal property or the sale of (non-taxable) services. See *Houghton Mifflin Co. v. State Tax Commission*, 373 Mass. 772, 774 (1977); *Commissioner of Revenue v. Houghton Mifflin Co.*, 396 Mass. 666, 670 (1986); see also J.R. Hellerstein & W. Hellerstein, *STATE TAXATION, II Sales and Use, Personal Income, and Death and Gift Taxes*, ¶ 12.07[1][c]. Under the "object of the transaction" test, the analysis focuses on the character of the transaction in question "to ascertain whether the buyer's basic purpose was to acquire the property which was sold to it, or to obtain the services." See *id.*

The contract between Architect and Medical involves a professional service transaction. See G.L. c. 112, § 60A. Architect is a registered architect involved in the practice of architecture — the performing or agreeing to perform or holding one's self out as being able to perform professional services in connection with the design, construction, (etc.) ... of a building. ... G.L. c. 112, § 60A. The Appellate Tax Board determined that the transfer of design and specification blueprints to a client by a person

providing engineering services for the construction of a tunnel was a professional service transaction rather than a sale of tangible personal property. *See Stone and Webster Engineering Corporation v. State Tax Commission*, ATB Doc. No. 53902 (1972). The rule of *Stone and Webster* applies to architectural services as well as engineering services.

The "object of the transaction" between Architect and Medical is for the purchase of architectural services. Architect's transfer of 100 copies of design and specification blueprints to Medical's agent, Construct-O, does not constitute a "sale" of tangible personal property within the meaning of G.L. c. 64H, § 1. *See id.* As a result, Architect is not required to collect sales tax on the transfer of the design and specifications blueprints to Construct-O. The terms in the contract that provide for the reimbursement by Medical of Architect's separately stated expenses, including the cost of obtaining those blueprint copies, do not transform a service transaction into a "retail sale" of tangible personal property. *See id.*

Facts 2:

The facts are the same as in Facts 1 except, at the time of purchase, Architect presents Printz with a Sales Tax Resale Certificate (DOR Form ST-4). Printz accepts the Resale Certificate and does not collect sales tax from Architect. Architect then transfers the blueprints to Construct-O and does not collect sales tax on the transfer.

Issue 2:

Is the sale of the design and specification blueprints by Printz to Architect, where Architect purchases the blueprints with a Sales Tax Resale Certificate, exempt from Massachusetts sales tax as a sale for resale in the regular course of business.

Directive 2:

No. The sale of the design and specification blueprints by Printz to Architect, who uses a Sales Tax Resale Certificate, is *not* a sale for resale in the regular course of business for Massachusetts sales tax purposes. Rather, it is a retail sale of tangible personal property and is subject to sales tax.

Notwithstanding Architect's use of a Resale Certificate, Printz is responsible for the collection of sales tax on its sale of blueprints to Architect.

The subsequent transfer of the blueprints from Architect to Construct-O is *not* a sale of tangible personal property by Architect, and, for that reason, is not subject to Massachusetts sales tax. *See Directive 1.*

Discussion of Law:

For Massachusetts sales tax purposes, a "retail sale" is defined as "a sale of tangible personal property for any purpose other

than resale in the regular course of business." G.L. c. 64H, § 1 (emphasis added). The meaning of the phrase "resale in the regular course of business" does not simply rely on the subjective intent of the taxpayer or the formalities of presenting a resale certificate to a vendor. *See Jan Co. Central, Inc. v. Commissioner of Revenue*, 405 Mass. 686, 690 (1989); *Clark Franklin Press Corp. v. State Tax Commission*, 364 Mass. 598, 602 (1974). Instead, the sale for resale language finds its meaning within the underlying purposes of the sales and use tax statutory scheme and the resale exclusion within that scheme. *See Jan Co. Central, Inc. v. Commissioner of Revenue*, 405 Mass. 686, 688-90.

The sales tax established under G.L. c. 64H, and the use tax established under G.L. c. 64I, are complementary components of a unitary taxing program designed to reach all transactions, unless specifically exempted, in which tangible personal property is sold inside or outside the Commonwealth for storage, use or other consumption within the Commonwealth. *Towle v. Commissioner of Revenue*, 397 Mass. 599 (1986). The sales and use tax statutes are also fashioned so as to exclude or exempt from tax many intermediate transactions in the economic process so as to prevent the pyramiding of taxes. *See Courier Citizen Co. v. Commissioner of Corporations & Taxation*, 358 Mass. 563, 567 (1971); *see also Jan Co. Central, Inc. v. Commissioner of Revenue*, 405 Mass. 686, 690 n. 3. Thus, the intent behind the imposition of the sales tax only on "retail sales" is to tax the ultimate retail consumer, which is accomplished under G.L. c. 64H, through the definition of "retail sale." *See Courier Citizen Co. v. Commissioner of Corporations & Taxation*, 358 Mass. at 567-68.

There is an interplay under sales and use tax principles between the delineation of what constitutes a taxable sale, as distinguished from a non-taxable service, and the sale for resale provisions. J.R. Hellerstein & W. Hellerstein, *STATE TAXATION, II Sales and Use, Personal Income, and Death and Gift Taxes*, ¶ 12.06[1]. Generally, where the taxpayer is treated as providing non-taxable services, tangible personal property used and consumed by the taxpayer in providing those services is treated as taxable sales, and there is no resale. *Id.* These principles apply in Massachusetts.

The Supreme Judicial Court has stated that the "language [resale in the regular course of business] must find its meaning in the inherent nature of the business in question," meaning, the Court looks to see whether the transferor of the tangible personal property is in the business of selling property (a retailer or wholesaler) or whether the transferor provides a service. *Clark Franklin Press Corp. v. State Tax Commission*, 364 Mass. at 602; *see also Jan Co. Central, Inc. v. Commissioner of Revenue*, 405 Mass. at 690. Once it is determined that the inherent nature of the taxpayer's business is providing a non-taxable service, the taxpayer is the ultimate consumer of the

tangible personal property purchased and there is no resale of the same product upon delivery or retransfer to the transferor's client or customer. See *Jan Co. Central, Inc. v. Commissioner of Revenue*, 405 Mass. at 690-91. The fact that tangible personal property is delivered or retransferred does not establish that the property was resold in the "regular course of business." See *Clark Franklin Press Corp. v. State Tax Commission*, 364 Mass. at 602. The delivery or retransfer of the tangible personal property is considered "incidental to the transferor's business, serving to facilitate the consummation of the principal transactions." *Jan Co. Central, Inc. v. Commissioner of Revenue*, 405 Mass. at 689 (emphasis added).

The "inherent nature" of Architect's business is providing architectural services. See G.L. c. 112, § 60A (definition "practice of architecture"). The blueprints are connected with and are inseparable from the architectural services provided. See *Stone & Webster Engineering Corp. v. State Tax Commission*, ATB Doc. No. 53902 (1972). Thus, Architect is the ultimate consumer of the blueprints, and there is no resale of the same product upon delivery or retransfer to its client, Medical, or its client's agent, Construct-O. See *Jan Co. Central, Inc. v. Commissioner of Revenue*, 405 Mass. at 690-91.

The fact that Architect separately states the cost of the blueprints on its invoice to Medical, or that it is reimbursed by Medical for the cost of the blueprints, does not affect the conclusion that the design and specification blueprints are a necessary part of the architectural services it renders. See *Stone & Webster Engineering Corporation v. State Tax Commission*, ATB Doc. No. 53902. Such contractual formalities do not change the character of the transaction — there is no tangible personal property being sold by Architect. See *id.*

Printz, as a vendor of tangible personal property, is responsible for the collection of tax on its sales of blueprints to Architect. See G.L. c. 64H, § 3. Ordinarily, a vendor is excused from the collection of sales tax where the vendor accepts in good faith a Sales Tax Resale Certificate. See G.L. c. 64H, § 8. However, this Directive puts such vendors on notice that sales of blueprints to architects are taxable sales, notwithstanding the presentation of a resale certificate. Therefore, such vendors are responsible for the collection of sales tax under the facts as described in this Directive.

Facts 3:

The facts are the same as in Facts 1 except, at the time of purchase, with Medical's approval, Architect purchases the copies from Printz using Medical's Sales Tax Exempt Purchaser Certificate, DOR Form ST-5, which contains the sales tax exemption number listed on Medical's DOR Form ST-2. Printz accepts the Exempt Purchaser Certificate and does not collect sales tax on the transfer.

Issue 3:

Is the sale of the design and specification blueprints by Printz to Architect, where Architect purchases the blueprints with Medical's Sales Tax Exempt Purchaser Certificate, exempt from Massachusetts sales tax?

Directive 3:

No. Architect's use of Medical's Sales Tax Exempt Purchaser Certificate when purchasing the design and specifications blueprints from Printz does *not* exempt such purchases from Massachusetts sales tax.

Notwithstanding Architect's use of a Sales Tax Exempt Purchaser Certificate, Printz is responsible for the collection of sales tax on its sale of blueprints to Architect.

The subsequent transfer of the blueprints from Architect to Construct-O is *not a sale of tangible personal property* by Architect, and, for that reason, is not subject to Massachusetts sales tax.

Discussion of Law:

Architect's eligibility for exemption turns on its use of Medical's Sales Tax Exempt Purchaser Certificate, and whether it can validly claim, as required by G.L. c. 64H, § 6(e), that the sale of the blueprints by Printz to Architect is the same as a sale to an organization exempt from tax under Code Section 501(c)(3).

The plain words of a statute granting an exemption must be strictly construed. *First Agricultural National Bank v. State Tax Commission*, 353 Mass. 172, 175 (1967). "The burden of proof is upon the one claiming the exemption to show clearly and unequivocally that he comes within the terms of the exemption." *Id.* Section 6(e), exempts "[s]ales ... [of tangible personal property] ... to any corporation, foundation, organization or institution, which is exempt from taxation under the provisions of [§ 501(c)(3)] of the Federal Internal Revenue Code ... provided, however ... the tangible personal property ... is used in the conduct of such religious, charitable, educational or scientific enterprise." G.L. c. 64H, § 6(e).

The § 6(e) exemption is clear. The plain meaning of the language grants an exemption from tax only where the sale is made *directly* to a tax exempt entity. *Id.* Section 6(d), a parallel exemption provision applicable, generally, to sales to governmental entities, contains similar language. Under G.L. c. 64H, § 6(d), "[s]ales to the United States, the commonwealth ..." are exempt from sales tax. The Supreme Judicial Court has construed this language narrowly, ruling that only sales made directly to the United States or the Commonwealth of Massachusetts are exempt from Massachusetts sales tax under 6(d). See *First Agricultural National Bank v. State Tax Commission*, 353 Mass. at 175-76. In this regard, we see no sound

basis for treating the § 6(e) exemption differently than the § 6(d) exemption. Both provisions require direct sales to the listed entities in order give rise to an exempt sales transaction. The sale of the blueprints by Printz to Architect is not a sale of tangible personal property directly to a 501(c)(3) organization. Therefore, the exemption under G.L. c. 64H, § 6(e), does not apply.

For the reasons stated in Directive 2, Printz is responsible for the collection of sales tax on its sale of blueprints to Architect, notwithstanding Architect's use of a Sales Tax Exempt Purchaser Certificate. See Directive 2, Discussion.

Facts 4:

The facts are the same as Facts 1 except, the contract provides that Architect is the agent for Medical for the purpose of making purchases of tangible personal property in connection with the construction of the hospital.

At the time of purchase, Architect presents Printz with Medical's Sales Tax Exempt Purchaser Certificate, DOR Form ST-5, which contains the sales tax exemption number listed on Medical's DOR Form ST-2. Printz accepts the Exempt Purchaser Certificate and does not collect sales tax on the transfer. Architect then transfers the blueprints to Construct-O and does not collect sales tax on the transfer.

Issue 4:

Is the sale of the design and specification blueprints by Printz to Architect, as agent, where Architect purchases the blueprints with Medical's Sales Tax Exempt Purchaser Certificate, exempt from Massachusetts sales tax?

Directive 4:

No. The sale of the design and specification blueprints purchased by Architect, as agent, where Architect uses Medical's Sales Tax Exempt Purchaser Certificate, is *not* exempt from Massachusetts sales tax.

Notwithstanding Architect's use of a Sales Tax Exempt Purchaser Certificate, Printz is responsible for the collection of sales tax on its sale of blueprints to Architect.

The subsequent transfer of the blueprints from Architect to Construct-O is *not a sale of tangible personal property* by Architect, and, for that reason, is not subject to Massachusetts sales tax.

Discussion of Law:

Architect's claim of exemption turns on its status as the Medical's agent, and whether, as such, it can claim exemption under G.L. c. 64H, § 6(e), as if it were an organization exempt from taxation under the provisions of Code § 501(c)(3).

Architect is both the purchaser and the ultimate consumer of the blueprints. See Directive 2, Discussion. Under these facts there is no actual sale of tangible personal property to an exempt entity. Rather, the sale of tangible personal property is to a service provider who is using the property in connection with the performance of its services. That Architect is designated by contract as Medical's agent for purposes of purchasing tangible personal property does not determine the proper application of the Massachusetts sales tax. The blueprints are *sold to* Architect and not Medical. See Directive 3, Discussion. In addition, Architect provides a professional service, and the blueprints are *used and consumed* by Architect in the performance of its professional services. See Directive 2, Discussion. Thus, Printz's sale of blueprints to Architect, as Medical's agent, is *not* exempt from sales tax under G.L. c. 64H, § 6(e).

For the reasons stated in Directive 2, Printz is responsible for the collection of sales tax on its sale of blueprints to Architect, notwithstanding Architect's use of a Sales Tax Exempt Purchaser Certificate. See Directive 2, Discussion.

Facts 5:

The facts are the same as in Facts 1 except Architect's contract with Medical does not require it to provide Medical's agent, Construct-O, with up to 100 copies of the design and specification blueprints for the construction of the hospital. Instead, under its contract for architectural services, Architect is required to transfer to Medical only one set of design and specification blueprints. Upon transfer of the blueprints to Medical, Architect assigns to Medical all copyright and other intellectual property rights in the blueprints so that Medical is free to use the blueprints in any way it chooses without compensating Architect for any such other use once Architect transfers the blueprints to Medical or its designee.

After Architect delivers the single set of blueprints to Medical, Medical purchases 100 additional reproduced copies of the blueprints directly from Printz. At the time of purchase, Medical presents Printz with its Sales Tax Exempt Purchaser Certificate, DOR Form ST-5. Printz keeps a record of the sales price and of Medical's sales tax exemption number. Medical delivers several copies to Architect and the rest to Construct-O.

Upon receiving its copies, Architect continues to provide architectural services to Medical and Medical's agent, Construct-O, for the construction of the hospital based on its blueprints. Construct-O keeps some of the blueprints for its own use, and sends others to different public officials in order to secure the various construction permits necessary to the project. Finally, Construct-O sends the remaining blueprint copies to an assortment of subcontractors who will be submitting bids to Construct-O on the different building components of the project.

Issue 5:

Is sale of design and specification blueprints by Printz to Medical subject to Massachusetts sales tax?

Directive 5:

Yes. The sale of design and specification blueprints by Printz to Medical is subject to Massachusetts sales tax. As a result, Printz is responsible for the collection of sales tax on its sale of design and specification blueprints to Medical.

Discussion of Law:

Architect's transfer of a single set of blueprints to Medical is not a sale of tangible personal property, and, therefore, is not subject to Massachusetts sales tax. The contract between Architect and Medical involves a professional service transaction, and, as a result, the "object of the transaction" between Architect and Medical is for the purchase of architectural services and not for blueprints. In this respect, the the substance of the transaction between Architect and Medical is the same as that in Issue 1. See Directive 1, Discussion of Law.

Furthermore, the Architect's assignment to Medical of all copyright and other intellectual property rights in the blueprints does not change the substance of the transaction, and, therefore, the tax consequences of the transaction. Where professional services are embodied in tangible personal property, the professional service provider is considered the ultimate consumer of such tangible personal property in the performance of its professional service contract. See Directive 2, Discussion of Law.

Accordingly, Printz's copying blueprints for consideration at the request of Medical is not exempt from Massachusetts sales tax under G.L. c. 64H, § 6(e), because, under the facts as stated, the blueprints are not separate and apart from the architectural services contracted for by Medical. See J.R. Hellerstein & W. Hellerstein, *supra* ¶ 12.06. Where Architect continues to perform services with respect to the building of the hospital after the delivery of the blueprints to Medical, the nature of the trans-

action between Architect and Medical is still a sale of services and not of tangible personal property. That is so, notwithstanding the fact that Architect has assigned to Medical all copyright and other intellectual property rights in the blueprints, and that Medical is free to use the blueprints in any way its chooses without compensating Architect for such other use.

Printz, as a vendor of tangible personal property, is responsible for the collection of tax on its sales of blueprints, notwithstanding the fact that at the time of purchase Medical presented Printz with a Sales Tax Exempt Purchaser Certificate, DOR Form ST-5. See G.L. c. 64H, §§ 3, 8.

Facts 6:

In addition to the copies of the design and specification blueprints, Architect also must provide models, various photographs, and water color drawings or renderings of the hospital based on the design plans. Architect contracts with a model maker, a photographer, and an artist, each of whom provides Architect with the finished product. For purposes of this Directive, the model maker, photographer, and the water color artist are presumed to be vendors of tangible personal property.

Directive 6:

The sales tax consequences attributable to the sale and transfer of the model, photographs, and drawings are identical to those that attach to the sale and transfer of the blueprints under the fact pattern described in Directives 1 through 4 for the reasons given in Directives 1 through 4.



Mitchell Adams
Commissioner of Revenue
July 8, 1993